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July 9, 2004

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Federal Communications Commission  
Office of Secretary

Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

ATTN: Barbara A. Kreisman, Room 3-A266,

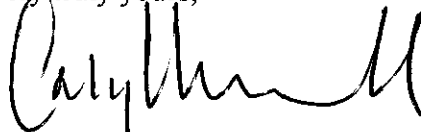
**Re: Amendment of DTV Table of Allotments (Appleton, Wisconsin)**  
**MB Docket No. 04-185, RM-10860**

Dear Ms. Dortch:

On behalf of 3G COMM, L.L.C. ("3G COMM") and pursuant to instructions set forth in the *Notice of Proposed Rule Making* in the above-captioned proceeding,<sup>1</sup> we hereby submit an original and four (4) copies of 3G COMM's comments in the above-referenced proceeding.

Please contact the undersigned counsel should you have any questions.

Very truly yours,



D. Cary Mitchell  
Counsel to 3G COMM, L.L.C.

cc: Pam Blumenthal, Media Bureau (Room 3-A726)  
David D. Oxenford

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<sup>1</sup> See In the Matter of Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Appleton, Wisconsin), *Notice of Proposed Rule Making*, MB Docket No. 04-185, DA 04-1316 (rel. May 21, 2004) ("Notice").

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
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Amendment of Section 73.622(b), )  
Table of Allotments, ) MB Docket No. 04-185  
Digital Television Broadcast Stations, ) RM-10860  
(Appleton, Wisconsin) )  
 )

To: Chief, Video Division

**COMMENTS OF 3G COMM, L.L.C.**

3G COMM, L.L.C. ("3G COMM"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its comments in support of Ace TV, Inc. ("Ace"), licensee of WACY(TV) and its proposal to substitute DTV Channel 27 for DTV Channel 59 at Appleton, Wisconsin.<sup>1</sup>

In brief, Ace has demonstrated that the allotment of Channel 27 for use by WACY-DT could be made consistent with the *de minimis* interference criteria set forth in the Commission's Rules and that adoption of its alternate channel proposal at Appleton would resolve conflict between Ace and CBS Broadcasting, Inc. ("CBS"), allowing both parties to operate on new in-core allotments. While these justifications alone provide a sufficient basis for the Media Bureau to grant Ace's request, 3G COMM wishes to add its comments to the record in this proceeding because an expeditious grant of Ace's channel substitution request will facilitate the prompt clearing of the lower 700 MHz band (698-746 MHz) of incumbent broadcasters, as well as the rapid deployment of advanced

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<sup>1</sup> See In the Matter of Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Appleton, Wisconsin), *Notice of Proposed Rule Making*, MB Docket No. 04-185, DA 04-1316 (*rel.* May 21, 2004) ("Notice").

wireless services in the Appleton-Oshkosh-Neenah, Wisconsin Cellular Market Area (“Appleton CMA” or “CMA125”) and adjacent markets.

### **Background / Statement of Interest**

3G COMM is a Wisconsin limited liability company and small business<sup>2</sup> that participated in the FCC’s Lower 700 MHz Auction No. 44 in August-September of 2002 and was a successful bidder for a Lower 700 MHz C-Block license in the Appleton CMA. The FCC granted 3G COMM’s long-form application on December 9, 2002, and 3G COMM paid the Commission on time and in full for its license, which was granted in January of 2003 under Call Sign WPWU882.

3G COMM obtained its Lower 700 MHz Band license as a way to provide advanced wireless services, such as high speed wireless Internet access, to business and residential customers in Appleton and surrounding rural areas. Because of its superior propagation characteristics, 3G COMM believes that licensed 700 MHz band spectrum will provide numerous advantages over unlicensed spectrum and licensed frequencies above 1 GHz for the provision of wireless broadband service over large geographic areas. As an example, a 700 MHz system should be able to cover an area 2-3 times larger than that which can be covered using personal communications services (“PCS”) spectrum (1800 – 1900 MHz) or Multipoint Distribution Service (“MDS”) spectrum (2500 MHz), and reach customers in remote areas that cannot possibly be served from a centralized transmitter using unlicensed spectrum at 2.4 or 5.8 GHz. This will result in more broadband choice for consumers, greater system reliability as well as significant savings in capital and operating costs. Moreover, licensed 700 MHz spectrum will be far better at

accommodating terrain obstructions such as trees and buildings, and other situations where non-line-of-sight communications links are needed.

3G COMM hopes to begin construction and operation of a 700 MHz band network in the Appleton CMA in the near future. However, as the Commission is aware, the frequencies authorized under each Lower 700 MHz C-Block license (710-716 MHz paired with 740-746 MHz) correspond to broadcast television channels 54 and 59, and Lower 700 MHz licensees are obligated to protect co-channel and adjacent channel TV and DTV operations through the end of the DTV transition.<sup>3</sup> Therefore, so long as Channel 59 is allocated for DTV facilities in Appleton, 3G COMM (and Lower 700 MHz C-Block licensees in adjacent geographic markets) will be precluded from deploying wireless facilities that utilize any portion of the upper 6 MHz of their licensed spectrum. On the other hand, if the Commission grants Ace's proposal requesting the substitution of DTV channel 27 for DTV Channel 59 at Appleton, the risk of co-channel interference to the Channel 59 DTV operations will be eliminated and 3G COMM and other 700 MHz C-Block licensees in adjacent markets can put all of their licensed 700 MHz spectrum to immediate use for the provision of advanced wireless services.

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<sup>2</sup> 3G COMM notes that it participated in FCC Auction No. 44 as an "entrepreneur" because it had average annual gross revenues of not more than \$3 million for the preceding three years. This is the smallest business size category for purposes of the Lower 700 MHz band. See 47 C.F.R. § 27.702 (a)(1).

<sup>3</sup> See 47 C.F.R. § 27.60 (a)(1). According to this rule, the minimum desired-to-undesired ("D/U") signal ratio for co-channel stations is:

- (i) 40 dB at the hypothetical Grade B contour (64 dB V/m) (88.5 kilometers (55 miles)) of the TV station;
- (ii) For transmitters operating in the 698-746 MHz frequency band, 23 dB at the equivalent Grade B contour (41 dB V/m) (88.5 kilometers (55 miles)) of the DTV station; or
- (iii) For transmitters operating in the 746-764 MHz and 776-794 MHz frequency bands, 17 dB at the equivalent Grade B contour (41 dB V/m) (88.5 kilometers (55 miles)) of the DTV station.

**I. Grant of the Ace DTV Channel Substitution Proposal is Consistent with the Commission's Policies and Rules in All Respects**

According to the Engineering Statement that was submitted by Ace in conjunction with its Joint Reply Comments and MM Docket No. 01-334, Channel 27 can successfully be used by WACY-DT with its currently allocated power level and a modified antenna pattern. The Video Division of the Media Bureau has indicated that the proposed substitution of DTV Channel 27 for DTV Channel 59 at Appleton is in compliance with the principle community coverage requirements of Section 73.625(a) with a "c" designation.<sup>4</sup> In addition, the Video Division has confirmed that this channel substitution proposal is acceptable under the two-percent criterion for *de minimis* interference that is applied in evaluating requests for modification of initial DTV allotments under Rule Section 73.623(c)(2).<sup>5</sup>

Because the DTV channel substitution request filed by Ace is in full compliance with the Commission's DTV policies and rules, 3G COMM is aware of no legal or regulatory impediment to the proposed amendment of the DTV Table of Allotments found at Rule Section 73.622(b).

**II. Expedient Grant of the Ace DTV Channel Substitution Proposal Will Serve Numerous Policy Objectives and is Consistent with the Public Interest**

As mentioned above, Ace has already cited to a number of public interest factors in support of its DTV channel substitution proposal. In this regard, 3G COMM agrees with Ace that the proposal is in the public interest because it will permit WACY(TV) to

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<sup>4</sup> Notice at pp. 1-2.

<sup>5</sup> *Id.* at p. 2.

replace its out-of-core channel with an in-core channel.<sup>6</sup> 3G COMM also agrees it is in the public interest to grant Ace's proposal since this will help resolve a conflict with a proposal by CBS Broadcasting, Inc. ("CBS") to substitute DTV Channel 39 for DTV Channel 56 in Green Bay, thereby alleviating the need for WFRV-TV to construct two different DTV facilities during the transition.<sup>7</sup>

A further public interest factor that the Commission should recognize in support of Ace's DTV channel substitution proposal involves the rapid clearing of the 700 MHz Band, especially channels corresponding to the Lower 700 C-Block frequencies (Channels 54 and 59), of incumbent broadcasters. In this regard, an expeditious grant of the Ace DTV channel substitution proposal in Appleton is consistent with FCC policies which seek to promote an orderly transition for broadcasters while permitting the introduction of new services into the 700 MHz band.<sup>8</sup> An expeditious grant of the Ace DTV channel substitution proposal would also promote opportunities for small businesses (*e.g.*, 3G COMM) to participate in the provision of spectrum-based services as well as to ensure the rapid deployment of advanced telecommunications services to all Americans, as mandated by Section 309(j) of the Communications Act of 1934, as amended (the "Act").

Accordingly, 3G COMM urges the Commission to grant the DTV channel substitution request of Ace and to amend the DTV Table of Allotments as proposed,

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<sup>6</sup> See Joint Reply Comments of Ace TV, Inc. and CBS Broadcasting, Inc. and Agreement for Resolution of Conflicting Proposals, MM Docket No. 01-334 (*filed* February 8, 2002) ("*Joint Proposal*") at pp. 1-2.

<sup>7</sup> See Engineering Statement of Donald L. Markey, P.E., included as Exhibit A to the *Joint Proposal*.

<sup>8</sup> See, *e.g.*, Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59) *Notice of Proposed Rule Making*, GN Docket No. 01-74, 25 CR 2103, 66 FR 19106 (*rel.* Mar. 28, 2001) at ¶ 1.

without delay. The sooner that the 700 MHz Bands (including Lower 700 MHz band, the Upper 700 MHz band, the 700 MHz public safety spectrum and the 700 MHz guard band) can be cleared of incumbent broadcast operations and DTV channel allocations, the sooner this valuable spectrum can be put to productive use by new licensees and public safety community for the provision advanced wireless services.

### CONCLUSION

Because the proposed DTV channel substitution in Appleton is consistent with the Commission's policies and rules in all respects, and because a rapid clearing of broadcast facilities and channel allocations from the 700 MHz band is in the public interest, 3G COMM respectfully requests that the FCC grant the DTV channel substitution request of Ace and to amend the DTV Table of Allotments as proposed, without delay.

Respectfully Submitted,

3G COMM. L.L.C.



By: Rick Schuchart  
Managing Member

Filed: July 9, 2004

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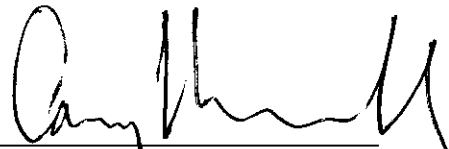
## CERTIFICATE OF SERVICE

I, Cary Mitchell, hereby certify that I have on this on this 9<sup>th</sup> day of July, 2004, caused a copy of the foregoing **Comments of 3G COMM, L.L.C.** to be served by hand delivery or first class mail upon the following:

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D. Cary Mitchell

\* Via Hand Delivery